IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 407 OF 2003

Prakash Somnath Boob. ... Applicant.

V/s.

1. Jaiprakash Badrinarayan Rathi,
2. Sau Prabhavati Jaiprakash Rathi,
3. Nilesh Jaiprakash Rathi,
4. Santosh Jaiprakash Rathi.
5. The State of Maharashtra. ... Respondents.

Ms.Smita Mane i/b. P.B.Shah for the applicant.

Rajiv Patil with Ms.Seema Sarnaik for respondent Nos.1 to 4.

Rajesh More, A.P.P. for respondent No.5.

CORAM: V.C.DAGA, J.

DATED: 4th September 2007.

JUDGMENT :

. This criminal revision application is directed against the order dated 16h July, 2007 passed in Sessions Case No.207/1995 by 5th Additional Sessions Judge, Nashik acquitting accused Nos.1 to 4 of the offence punishable under section 4 of the Dowry Prohibition Act, 1961 ("Dowry Act" for short) and accused No.3 of the offence punishable under section

306 of Indian Penal Code (I.P.C.).

Factual Matrix :

2. The undisputed factual matrix reveal that on 7th July, 1995 at about 4.00 p.m., in the agricultural field behind Anandwalli Darga at Nashik, one Ujwala Prakash Boob committed suicide by consuming poison i.e. Baygon insecticide. That she died in the civil hospital at about 9.00 hours on 8th July, 1995.

3. The facts further reveal that Ujwala had love affair with accused No.3- Nilesh. This affair went on for about 3 to 4 years prior to the unfortunate event. Ultimately, the marriage of Ujwala came to be fixed with Nilesh. Engagement ceremony was celebrated. Marriage date was settled as 19th November, 1995. Between the date of engagement and marriage, Ujwala committed suicide on 8th July, 1995. F.I.R. came to be lodged. Crime came to be registered. Investigation, thereafter, commenced. The chargesheet was put up against all the accused persons. Charges came to be framed under section 306 read with section 34 of I.P.C. against accused No.3 and under section 4 of Dowry Act against accused Nos.1 to 4. Pursuant to the charges framed against them, the trial took place.

4. The question raised in the trial was whether accused No.3- Nilesh abetted Ujwala to commit suicide. The another question which came to be tried is that

whether accused Nos.1 to 4 hd committed any offence punishable under section 4 of the Dowry Act.

5. During the course of trial, the evidence of almost more than 15 witnesses came to be recorded, out of which the evidence of P.W.9- Prakash Boob, P.W.10- Radhesham and P.W.11- Radhakishan being relevant came to be appreciated in detail by the Sessions Court and after appreciation of evidence at length the Sessions Court came to the conclusion that no offence was proved either under the provision of section 4 of the Dowry Act or under section 306 of I.P.C. Consequently, all the accused came to be acquitted by the Sessions Court vide impugned order. This order is a subject matter of challenge in the present revision.

Rival Submissions :

6. The learned counsel appearing for the applicant Ms.Mane urged that after the engagement ceremony and before marriage there were certain meetings between the members of both families. In these meetings, demand of dowry to the extent of Rs.25 to 30 lakh for expansion of photography business of Nilesh surfaced. She further submits that when the brother of Ujwala went to the house of Nilesh to settle the marriage arrangements he was told that

about 2,500 guests would be expected in the marriage of Nilesh and that they would have to gift Rs.150/- to each of them. She further submits that the parents of Ujwala found it difficult to meet the demands made.

7. Ms.Mane further submits that in the family of Ujwala this matter was discussed. During the discussion, her parents and brother expressed their inability to meet dowry demands. When this fact was noticed by Ujwala during the course of discussion between her family members, she appears to have sensed that marriage with Nilesh may not go through as such she proceeded to commit suicide. In substance, the submission is that accused Nos.1 to 4 demanded dowry and thereby they committed offence under section 4 of the dowry Act. That accused No.3- Nilesh has driven her to commit suicide as such he has committed an offence under section 306 of I.P.C. In her submission the Court below has not taken proper view of the matter even though sufficient evidence was available on record to convict each of them. In her submission, appreciation of evidence is perverse as such impugned judgment and order of acquittal is liable to be reversed.

8. At the outset, Mr.Patil, learned counsel for

respondent Nos.1 to 4 (original accused) urged that in the revisional jurisdiction this Court has a limited jurisdiction to interfere with the impugned order. He submits that during the course of hearing not a single piece of evidence is pressed into service to show that the same has not been taken into account by the Sessions Court. In other words, the applicant could not point out as to which part of evidence has been excluded from consideration by the Court below warranting exercise of revisional jurisdiction of this Court. He further submits that the entire evidence cannot be reappreciated by this Court in exercise of revisional jurisdiction.

9. Mr.Patil, with the aforesaid submission, took me through the evidence of all the witnesses and sought to demonstrate how improvements were made in the prosecution story by the prosecution. He went a step ahead and pointed out that each and every relevant piece of evidence has been appreciated by the Sessions Court as such no interference with the impugned order on merits is warranted.

10. Mr.Patil further submits that so far as accused No.3- Nilesh is concerned, on the date of unfortunate event he was not present in the town.

Relying upon the evidence of P.W.13- (Deshmukh), he sought to argue that Nilesh had left for Tirupti by Panchavati Express at 7.00 hours on 6th July, 1995 and returned back on 14th July, 1995. Thus, charge against Nilesh for the offence under section 306 of I.P.C. Is absolutely untenable. Mr.Patil, thus, prayed for dismissal of this revision application.

Consideration :

11. Having heard learned counsel for rival parties and learned A.P.P. appearing for the State, the main witness on behalf of prosecution was P.W.9- Prakash Boob, who is father of deceased Ujwala. He admitted that there was a love affair between deceased Ujwala and accused No.3- Nilesh. It is, thus, clear that the marriage was not an arranged marriage though colour of arranged marriage was given to maintain prestige in the society. The engagement of deceased Ujwala with Nilesh was out of compulsion. Viewed from this angle, the possibility of demand of dowry is remote. The evidence on record neither support the theory of demand of dowry sought to be made out nor does it inspire judicial confidence. The Sessions Court has taken into account evidence on record and appreciated the same and while appreciating evidence of P.W.9- Prakash Boob, the Court has observed as under:

> "... All these facts deposed to by informant P.W.9 Prakash Boob were not stated by him in his earlier statement which came to be recorded by police on 10/7/1995. At the cost of repetition I state here that informant Prakash Boob made it clear in his cross-examination that his statement was again recorded by police on 18/7/1995 wherein it was stated by him that his earlier statement which was recorded by police on 10/7/1995 was correct one....."

12. The evidence of P.W.10- Radhesham was also appreciated by the Sessions Court. In that behalf the Court below was pleased to observe as under:

> ".....This witness gave no evidence on the point that accused persons made demand of Rs.25 lakhs to the informant towards dowry for consideration of the marriage of Ujwala and Nilesh....."

13. The Court below has also taken into account the mental state of the deceased Ujwala after scanning letters written by her to Nilesh, which came to be seized during police enquiry. The Court below has also taken into account the material which came on record through cross-examination of Prakash Boob that, his relatives did not appear in the civil hospital

even to see the dead body of Ujwala. Thus, while appreciating this abnormal conduct of the relatives, the Sessions Court has come to the conclusion that the conduct of Ujwala indulging in love affair, proposed marriage and consequent act of committing suicide was not liked by her relatives. The Court below has also taken into account adverse atmosphere prevailing in the family of Ujwala which, according to the Sessions Court, may be the cause of driving her to commit suicide.

14. Now, turning to the legal issue revolving around section 306 of I.P.C., which pertains to abetment of suicide, one has to observe that it is settled that word "abetment", which occurs in section 306, is abetment within the meaning of section 107 of I.P.C. Which reads as under:

> "**107. Abetment of a thing** - A person abets the doing of thing, who - Firstly instigates any person to do that things; Secondly - Engages with one or more other persons or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that things; or Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.
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> *Explanation 1* - A person who, by wilful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or

> attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

15. It is the case of prosecution that, accused No.3 had committed an act or omission to aid Ujwala to commit suicide. It is on record that accused No.3 was not in town on that fateful day. If that be so, the submission of Ms.Mane that the demand of dowry has caused emotional hurt to Ujwala causing trauma which instigated her to commit suicide does not hold good.

16. In a recent judgment delivered in the case of **Sanju @ Sanjay Singh Sengar v. State of M.P.**, AIR 2002 SC 1998, the Apex Court had occasion to interpret section 306 read with section 107 of the Indian Penal Code. The Apex Court held that presence of *mens rea* is a necessary concomitant of instigation which was ingredient of the offence within the meaning of section 107 firstly of the Indian Penal Code. The facts of the case were, in fact, more extreme where the accused had expressly told the deceased to go and die. The Apex Court held that even telling the deceased to go and die would not constitute the ingredient of "instigation". In that case, a suicide note was also left by the deceased showing that he was in great stress and depression. The wife of the

deceased had made a statement that deceased was a frustrated man and was in the habit of drinking. The Apex Court in that case, in fact, quashed the chargesheet on the ground that ingredients of abetment were totally absent.

17. It would also be profitable to make reference to the judgment of the learned single Judge of this Court in the case of **Satish Narayan Ate v. State of Maharashtra**, 1997 Cri.L.J. 935. The facts of that case were that the accused was having a love affair with the deceased girl. The marriage was settled between them but the accused did not turn up at the time of marriage and, therefore, victim girl committed suicide. It was held that it was not proved that the accused intended by not marrying that she should commit suicide or that she was likely to commit suicide. That act of committing suicide was an independent act of deceased for committing suicide.

18. Turning to the facts of the instant case, accused Nos.1, 2 and 4 have not been charged for the offence under section 306 of I.P.C. So far as accused No.3- Nilesh is concerned, there is absolutely no evidence to show that he had asked for any dowry or

made any demand from the parents of deceased Ujwala, as such there was no occasion for him to cause any emotional hurt to deceased Ujwala. He did not refuse to marry her so as to drive her to commit suicide. As a matter of fact, he was not present in the town on the day of incident. It is not proved that accused No.3 intended not to marry Ujwala; if the alleged demands of his parents (which were not proved) were not fulfilled. The act of committing suicide was an independent act of the deceased for which none of the respondents- accused could be held responsible.

19. Having said so, it is true that the jurisdiction of this Court while entertaining criminal revision is limited which is recognised by this Court and also by the Apex Court in number of decisions. Readily available decision is in the case of **C.P.Fernandes v. Union territory of Goa, Daman & Diu**, AIR 1977 SC 135, wherein the Apex Court has ruled that the Court should not interfere with the trial Court view unless found to be unreasonable or perverse. If two views are possible on the basis of evidence on record, the higher Court should not disturb the findings of the trial Court. The same principle is reiterated in the case of **Varghese Thomas v. State of Kerala**, 1977 SC 701.

20. This Court not being a Court of appeal cannot reappreciate and substitute its view in exercise of revisional jurisdiction. Revisional jurisdiction is not only limited in scope but discretionary. The Court interferes in the revisional jurisdiction only in exceptional cases of flagrant miscarriage of justice as held by Apex Court in the case of **State of Rajasthan v. Gurucharandas Chaddha, AIR 1979 SC 1895.** No such case is made out by the applicant.

21. In the light of the law laid down by the Apex Court, if one turns to the evidence, it is not possible to come to the conclusion that the impugned order is perverse or that the Court below has committed any illegality in appreciating the evidence so as to misdirect itself to acquit accused persons. In my opinion, the evidence has been rightly appreciated by the Court below. The view taken is a reasonable and possible view, which can very well be sustained on the basis of evidence available on record. In the above view of the matter, no case is made out to interfere with the impugned order.

22. In the result, revision application is dismissed with no order as to costs.

JUDGE